

Feb. 27, 2007

To: The Sunshine Task Force  
From: Susan Goldberg

After Saturday's meeting, I thought it was worth sharing with all of you our experiences in trying to fairly and accurately report on crime and public safety in San Jose. As we discuss broader disclosure requirements, it seems worthwhile for the Task Force to truly understand the reality of how the San Jose Police comply with disclosure laws already on the books.

Our community saw a snapshot of that in the recent audit conducted by Californians Aware, which sent reporters not known to the department into various police headquarters, to request public documents. I wish it were otherwise, but we were not surprised that San Jose – and five other police agencies surveyed in Santa Clara County – received an "F" grade. Whether the test was perfect or not can be debated. What cannot be debated was the consistency of the poor performance by local police officials in complying with public records laws – a performance that should set off alarm bells. I am attaching a copy of the story that we ran about the study, as well as a large chart of departments' grades.

At our Saturday meeting, what I heard the Police Department saying to us, as they argued against disclosure requirements already in force in other cities, was this: "Trust us. We are mindful and respectful of the public's right to know, and we give it all the accordance we can. But there are times when it's just not possible to release information without compromising public safety." Then, they used as examples the kind of sensitive information that strikes an emotional chord, such as the names of victims and witnesses.

I'd like to be clear on this point: If it endangers a person or compromises an investigation, we withhold the names of victims, witnesses and other salient facts. We do not print names of juvenile victims, or juveniles arrested or charged with crimes (unless charged as an adult). We do not print names of sexual assault victims. All of that is information we regularly obtain but do not publish for the very reasons police cite. We're more than willing to work with police on these matters and have a history of responsibly doing so.

The trouble is that the department often withholds basic, not especially sensitive information that does not reflect the lofty protective purpose the police discussed on Saturday. This recalcitrance is even more confounding because the information clearly falls under the realm of public information. While I fully expect there always to be some inherent tension in the relationship between a city's police and its press, I am disturbed that there apparently are such different views of the current reality. And that's why the Task Force needs to make recommendations that clarify what the balance should be.

Let's look at a few recent examples to illustrate this. I'll cite both big and small examples, not to be petty, but to demonstrate the scope of the issue:

--On Jan. 6, following up on a tip, a Mercury News reporter asked the department's PIOs (public information officers) about a security guard being shot at Santana Row. PIOs said they had no

information - for three days. The reporter finally confirmed the guard had been shot through a mall spokesman. In fact, it was the mall spokesperson who told us that the assailant was in custody. Only then, when confronted with this information, did police acknowledge the event had occurred.

Clearly the public had a right to know of the incident. If you were considering going shopping at Santana Row, wouldn't you want to know there had been a shooting? What possible reason is there for the police not to even acknowledge the incident took place? If they were worried about the victim, they could withhold the victim's name. They could withhold the names of witnesses. But not to acknowledge the incident ill serves everyone in our community.

--At Saturday's Task Force meeting, Capt. Kirby said, twice, that anyone could review the department's arrest logs – a simple list of who had been arrested the previous day. We agree this absolutely is public information under the California Public Records Act, but we were surprised to hear Kirby say it because we have been denied access to the logs in the past. So this week, we called the police to view the arrest logs. We again were denied.

By contrast, at the Santa Clara County Sheriff's office, all anyone need do to view the arrest log is to go over to the Younger Avenue headquarters and ask to see it. There are two logs – one is for the “public,” and it contains the names of everyone arrested by the Sheriff's Office during the past 24 hours; the second list is a “media” log, and it is even more complete. It also contains the address of the person arrested.

--On Dec. 23, 2006, a body was found in a burning home. Police and firefighters refused to identify the victim – and continued to refuse day after day. Finally, on Dec. 29, the Mercury News used public court records to write the story that the “fire victim” had in fact been murdered, that the fire was set as a diversion, and that the suspect had been in custody for four days. Rather than explain why they had failed to release public information, police complained we went around them to write the story.

--“Police Blotter” items – logs of mostly lower-level incidents – aren't released consistently by San Jose police, and when they are, they never include names or addresses. Some days no items are released; other days, we get only one item – rather astounding for a community of nearly 1 million people. By contrast, Redwood City provides us with a complete list of dispatch calls. The information includes exactly what dispatchers tell police about the event. It is very detailed and always includes names and addresses for everything but sexual assaults and some abuse cases. Palo Alto blotter items come to us daily and include names of people arrested. It's also available on-line.

--On Jan. 29, 2007, we wrote about the city's first homicide. We still have no identification of the victim. Why not? Police declined to identify the victim, and only weeks later told us they were keeping the name under wraps because it was a gang-related incident. However, they have offered no information about why releasing the name would compromise the investigation (one would presume that the people who killed the man know whom they killed). We could, of course, spend some time and uncover the name; but without police cooperation in helping us understand the fuller context, it would not be a very meaningful story to the community.

As you can see, many of these issues go to both the timing and scope of information we believe the public needs to accurately understand public safety issues in San Jose. Yet, too often, we struggle to obtain even the basic details of a major crime – the place it happened, the time, a narrative of what happened; the name, address and age of the arrested suspect and victim (if adult and appropriate); the specific charges the suspect has been booked on; as full as possible a description of any wanted suspects; any other public safety issues surrounding the crime, police contact information for the public to help.

As several of the speakers noted on Saturday, police agencies, by their very nature, hold enormous power. For the public to fully understand and monitor such an agency, it needs access to information. We need the already-public information we should easily get now but don't, as well as the deeper understanding that can come from access to redacted police reports, which are currently available in other large cities.

As Terry Francke noted in his letter to the Task Force, "This approach is not new or radical. .... The public has at least as much right and interest in scrutinizing the performance of a police department as it does in scrutinizing how other departments perform their functions."

I recently met with Chief Davis and some of his top deputies to discuss these issues, and to suggest ways we can work more constructively with the department. As always, I found him receptive to our suggestions, and willing to engage in the conversation. There is no doubt that our police department does an excellent job fighting crime. However, this discussion about openness has been going on for the better part of 20 years, and it has become clear to those of us at the Mercury News that sharing information with the public is not a priority of the department. If our community wants public information to be a police priority, then this Task Force has the opportunity to send that message.

Thank you for taking the time to read this memo. I'd be happy to answer any questions.

Susan.

## **Attachment**

### **LAW ENFORCEMENT AGENCIES WOEFUL IN PROVIDING RECORDS**

**Published: Friday, January 12, 2007 Edition: Morning Final Section: Front  
Page: 1A**

# LAW ENFORCEMENT AGENCIES WOEFUL IN PROVIDING RECORDS

Published: Friday, January 12, 2007 Edition: Morning Final Section:  
Front Page: 1A  
Memo: MediaNews reporters Tom Peele and Matt Krupnick contributed to this report.

Illustration: Photo, Charts (2)

Source: BY **LESLIE GRIFFY**, Mercury News

Despite laws designed to ensure the public can learn about crimes, most local law enforcement agencies in California refused to release such basic information during an audit conducted last month.

Reporters from across the state, including the Mercury News, went anonymously to 216 California law enforcement agencies to gauge how those agencies treat residents who want to find out about a robbery spree or the potential for sexual assault in their neighborhoods.

Two-thirds of those agencies -- including San Jose and five other Santa Clara County departments -- earned an F grade because they failed to provide information on recent crimes, arrests and the **police** chief's economic interests as required under state law. The San Jose **Police** Department's score was the third lowest in the state.

The audit by a statewide watchdog group shows that members of the public "have a much tougher time" than journalists in obtaining information from **police**, said Tom Newton, general counsel of the California Newspaper Publishers Association. While reporters can often call a department's media representative directly, the public must contend with information desks that are often closed, long lines and indifferent service.

The Public Records Act clearly "requires agencies to help the public" obtain records, Newton said. But that didn't happen in most cases.

Only **police** departments in Dixon, Paso Robles and San Rafael received an A- grade from the group. The group gave **police** in Campbell, Los Gatos-Monte Sereno, Palo Alto, San Jose and Santa Clara an F-. Agencies that scored from 0-30 points received an F-. The Santa Clara County Sheriff's Department also received a failing grade.

Law enforcement leaders insisted that it is important to them to provide the public with information.

"We strive to follow the law," said Los Gatos-Monte Sereno **Police** Chief Scott Seaman, who is the chair of the Santa Clara County **Police** Chiefs' Association. "We are aware of public records requirements, and so are our staffs."

### Skewed picture

Seaman said the study did not provide a true picture of his department. The average citizen would have complied when instructed to give letters requesting information to the city attorney, Seaman said. But telling auditors to do so lowered a department's score.

About 13 percent of the agencies -- including San Jose **police** -- refused to accept a written request for information. State law requires them to accept such requests.

The audit was coordinated by Californians Aware, a Sacramento-based group that advocates for transparent government and records access. Reporters, including one from the Mercury News, were sent to law enforcement agencies they do not cover so they would not be recognized as journalists. Two Contra Costa Times reporters and a KGO-TV reporter visited the Santa Clara County agencies.

Auditors went to law enforcement agencies on Dec. 4. Among other things, they asked to see information about sexual assaults, armed robberies and burglaries between Nov. 1 and 15. They also left a written request for further information.

### Scant compliance

Few departments complied fully with the law. In some instances auditors said employees laughed at them and said they weren't entitled to any information. Other auditors said they felt threatened, were asked to give their names -- a no-no under state law -- and were incorrectly told only crime victims could have information about crimes.

In Napa County, an auditor was told he could see records only if county supervisors voted to allow it.

So many departments' responses were so "absurdly wrong," Californians Aware's general council Terry Francke said, that taxpayers should have legitimate questions about the administration of **police** agencies.

Under the California Aware grading system, 100 points were given to each agency. Points were deducted if they failed to release the information within 10 days.

Low score of 5

The statewide median score was 40. It was 30 in the nine-county Bay Area, where scores ranged from a low of five for the East Palo Alto **Police** Department to a statewide high score of 94 for the Dixon **Police** Department in Solano County.

The audit's release today comes the same week San Jose Mayor Chuck Reed took office, vowing to bring openness to government. But his **police** department ended up with 10 points, one of the lowest scores in the state.

According to the report, San Jose **police** refused to release crime data, failed to accept a written request for information and didn't provide information about a state-mandated form that outlines the economic interests of the chief of **police**.

"It's not a good thing when people have problems with public records requests," Reed said, noting the city council set up a new committee Tuesday to allow citizens with complaints about public records requests to bring their concerns to the council. "We are committed to open government."

The audit results were not a surprise for ACLU's San Jose director Sanjeev Bery, who has wrangled with **police** over access to reports detailing officers' use of force.

"Instead of maintaining a policy of openness, the San Jose **Police** Department has blocked access to information that would help citizens evaluate the department's performance," Bery said.

#### SJPD's response

San Jose **police** Sgt. Nick Muyo disputed that the department withholds information. He said he couldn't explain why his department failed to accept the written request for information.

"If anyone comes in and volunteers to leave a request in writing, we should take it," he said.

He acknowledged that the desk where people make requests for information has "limited hours." When the auditor visited at 10 a.m. on a Monday it was closed. But, Muyo said, there is information posted in the office about alternate ways people can make requests.

The department didn't give the auditor information about crimes or arrests, Muyo said, because it wasn't yet available.

***Police*** in Campbell said the information was available for a fee; it is legal to charge for such information but few departments do so. Los Gatos-Monte Sereno and Santa Clara ***police*** provided crime information, but not arrest information.

Some departments said they'd review training practices following the poor audit showing.

"I think everyone has learned something here," Muyo said.

#### HOW AGENCIES DID

According to a recent audit, six Santa Clara counties received an F- grade. In the Bay Area, nearly 67% of agencies failed.

#### HOW THE AUDIT WAS PERFORMED

On Dec. 4, 31 journalists visited more than 200 law enforcement offices in 34 California counties. Presenting themselves as ordinary citizens with no special affiliation, they requested public records both orally and in writing. No journalist went to an agency in an area he reports on.

***POLICE*** AND SHERIFF REQUESTS: At ***police*** stations and sheriff's departments, auditors asked for statements of economic interest and public information on any burglaries, armed robberies and sexual assaults between Nov. 1 and 15. They asked for arrest information in those cases.

They also left a letter asking to see 10 documents, including: asset forfeiture fund disbursement records, data on officer discipline, the latest death-in-custody report, the ***police*** chief's employment contract.

CHP REQUESTS: At CHP stations, the auditors asked to see citations and arrest information for all drunken driving and reckless driving stops for the same two-week period. Among the documents they requested: an officer salary schedule and the latest death-in-custody report.

#### WHAT ***POLICE*** DEPARTMENTS ARE REQUIRED TO MAKE PUBLIC

All of the information requested by the auditors is required to be made public under state law.

For instance:

(box) Government Code Section 6254, subdivision (f), paragraph (2) allows the public to get detailed information about any crime that occurs, including time, date, location, name

and age of the victim, and factual circumstances. When an arrest occurs the public has the right to inspect records that show the name, occupation and description of each individual arrested, along with other details of the arrest.

(box) Health and Safety Code Section 11495, subdivision (a), requires records of assets forfeited to a law enforcement agency to be "open to public inspection."

(box) City and county officials are required to file statements of their economic interests, known as Form 700s, which are supposed to be readily available for public review.

-- Thomas Peele and Matt Krupnick, MediaNews

# Rating police responsiveness

In an effort to assess how responsive police are to public requests for information, journalists from 31 newspapers and broadcast news outlets requested public records from more than 200 law-enforcement agencies throughout California. Here are the results of the audit for the Bay Area.

## SCORING

Police agencies were graded based on their response, cooperation, service and access allowed. Each department began with a score of 100. Points were subtracted each time:

■ Questions were asked such as "Who are you?" or "Why do you want these records?"

■ The auditor's name, occupation, intent, employer or identification were demanded as a condition for allowing inspection of public records.

■ The auditor was required to fill out a form for records.

■ Arrest and crime information failed

to contain all legally required information.

■ A department took more than 10 days to allow a record to be inspected.

■ A department referred the auditor to another agency.

■ A department refused to allow inspection of each requested item without citing specific legal reasoning.

■ Crime and arrest reports failed to

contain the full level of details required by law, such as

suspect's name, age, occupation and when and where the crime or arrest occurred.

Departments that failed to accept the auditor's written request for public records automatically failed the audit.

A: 90-100  
B: 75-89  
C: 60-74  
D: 45-59  
F: 0-44

POLICE AGENCY	GRADE	SCORE	RESPONSE
Alameda County Sheriff	F-	20	Sheriff's department requests extension to release records; no documents ever released.
Alameda	F-	25	Police lieutenant says he has to know auditor's identity before accepting request. Department charges a \$15 fee for crime reports.
Albany	D-	45	Releases detailed crime reports 10 days after being asked. Auditor is referred to other departments for several documents.
Antioch	B-	78	Immediately releases police chief's statement of economic interest. Crime information made public but documents cannot be copied.
American Canyon	F-	12	A sergeant says current crime and arrest information is not available, then refuses to accept a written request for public records.
Benicia	F	32	Auditor is told that arrested people must approve release of their records. Department document states all records are confidential.
Berkeley	F-	10	Department clerks repeatedly refer auditor to Web site. Clerks refuse to accept written request for public records.
Brentwood	C+	74	Says crime and arrest reports are public records only for seven days.
Campbell	F-	15	Claims police chief's contract is confidential. Does not answer asset forfeiture request.
CHP - Dublin	F+	40	Says DUI information is private. Staff refuses to accept written request for public information.
CHP - Hayward	F-	10	Requires identification; releases no information. Extended deadline passes with no information released.
CHP - Redwood City	F-	20	Releases no information. Extended deadline passes with no information released.
CHP - San Jose	F-	30	Says DUI information is available only at the courthouse. Demands identification and holds it for 10 minutes.
CHP - Solano	F-	30	No documents released. Repeatedly asks why information is being requested.
CHP - Martinez	F-	30	Says DUI records are not public information. Requests an extension for answering written request; deadline passes with no answer.

Concord	C	65	Says arrest and crime reports are public records for only seven days and not available to the public after that.
Contra Costa County Sheriff	D	51	Twenty-four days after receiving written request, sheriff's department refers auditor to other county departments.
Cotati	F-	20	Investigates identity of auditor; releases no public documents.
Dixon	A-	94	Highest grade in California. Releases nearly all requested documents with no questions asked.
Dublin	D+	55	Auditor is told that department is required by law to know her occupation and affiliation before accepting request for public records.
East Palo Alto	F-	5	Lowest score in the Bay Area. Makes no information public.
El Cerrito	B	84	Clerk asks to see auditor's ID. Auditor asks if that is required to inspect records. Clerk says his identity can be established another way.
Fairfax	C	65	Department releases no arrest or crime information upon request; chief wants to know what law firm or university auditor is from.
Fairfield	F	40	Department requires auditor's identity and reason for request. Does not respond to written request for public records.
Fremont	F-	20	Department does not acknowledge written request for public records. No records released or answers provided.
Half Moon Bay	F	35	Requires a separate letter for each of 10 items requested.
Hayward	F-	25	Asks for identification and reason for request; repeatedly asks auditor for her identity.
Livermore	F+	40	Says arrest records are found only on the Internet; city attorney says department does not make summary of records against officers public.
Los Gatos/Monte Sereno	F-	21	Refers auditor to city clerk for one request and city attorney for another.
Marin County Sheriff	D-	45	Says crime and arrest reports are not public information.
Mill Valley	F+	41	A clerk asks, "Who's your employer?" and tells auditor to come back another day.
Napa	D+	55	Department claims that new computer system will not allow crime and arrest information to be generated for inspection.
Napa County Sheriff	F-	20	Records clerk says all arrest and crime information is confidential unless county board of supervisors votes to make it public.
Newark	B-	78	Provides no arrest or crime information. City attorney provides detailed written response to written request; some documents released.
Oakland	F-	20	No one will answer questions or accept written request. Auditor told the department has no budget to provide public information.
Pacifica	B	84	Department provides detailed response to written request within 10 days of receiving it and releases documents requested.
Palo Alto	F-	29	Department refuses to allow copies to be made of arrest and crime records. No records released for more than a month.
Petaluma	D+	59	Department claims reduced staffing levels prevent it from making timely response. Some documents provided.
Piedmont	F-	30	Police captain says department is not required to release financial information, says he has discretion not to release information.
Pittsburg	D	50	Auditor is told that crime and arrest records are kept for only seven days.
Pleasanton	F-	30	Says only reporters, not members of the public, are entitled to inspect arrest and crime records.

Redwood City	F-	10	Department demands auditor's identity, refuses to make any records public.
Richmond	F+	40	Secretary tells auditor she has chief's economic statement but says he can't see it. Department is unsure if it can release arrest data.
Rohnert Park	F-	18	Auditor unable to see crime and arrest records. Department does not respond to written request for public records.
San Bruno	D	53	Makes only a "press log" public with last seven days of information. Routine public records provided with stamp saying "confidential."
San Carlos	F-	10	Department says it tries to answer requests for public records within 30 days. No records are provided.
San Francisco	D-	20	Department refers most requests to other city agencies or the city Web site.
San José	F-	10	Auditor says chief's aide yelled at her, which police deny; no info on chief disclosed; refuses to accept written request for public records.
San Leandro	F-	20	Officer who wouldn't give her name said she wouldn't accept a written request unless she knew what the records would be used for.
San Mateo County Sheriff	F-	20	Sheriff's department accepts written request for public records but never answers it. No crime or arrest info provided.
San Mateo	F-	15	Department charges \$50 an hour to research crime and arrest records; refuses to accept a written request for public records.
San Pablo	F-	21	Department employee asks for identity. Auditor asks if that is required to inspect records. She replies, "Oh my God," and walks away.
San Rafael	A-	90	Department makes most records public. Provides arrest and crime reports with no questions asked.
Saint Helena	F-	20	Department fails to answer a written request for public records.
Santa Clara County Sheriff	F-	25	Auditor's identification demanded. Records supervisor says, "We don't release records to anyone unless we've verified their identity."
Santa Clara	F-	24	Says statements of economic interest are confidential; does not respond to written request for public records.
Santa Rosa	F-	15	Says crimes and arrest reports cost \$10 each; says request is too big for the department without explaining what the information is for.
Solano County Sheriff	D-	45	Asks reason for request, fails to release arrest and crime information; refers auditor to state Department of Justice Web site.
Sonoma County Sheriff	F-	20	Auditor is referred to phone line with instructions on how to dispose of abandoned vehicles. Does not respond to request within 10 days.
South San Francisco	D+	55	Department says crime information is confidential.
Suisun City	F-	20	Department fails to respond within 10 days to written request for public records.
Vacaville	F-	30	Investigates auditor's identity and mails letter to address she had not provided.
Walnut Creek	B	80	Department releases most requested records and helps in pursuit of others.

Sources: Californian, Aware, MediaNews, KGO-TV

MERCURY NEWS